United States of America

In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. .....

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

This case involves the interpretation of the National Labor Relations Act (49 Stat. 499, 29 U. S. C., Sec. 151) and its application to the foreman level of management of the petitioner.

The purpose of the Act as announced by Congress, is to relieve obstructions to the free flow of commerce caused by industrial strife and unrest by providing by law for collective bargaining between certain employers and the representative selected by a unit of employees found to be appropriate to effectuate the purposes of the act by the National Labor Relations Board. If the employer refuses to collectively bargain with the representative so selected and certified by the Board, the Board may issue a cease and desist order and petition the Circuit Court of Appeals for an enforcement decree.

Section 2 of the Act provides that 'The term 'employer' *includes any person acting in the interest of any employer directly or indirectly* * * *,* and the same Section provides that, "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer * * * but shall not include any individual employed as an agricultural laborer."

The petitioner is a Michigan corporation of Detroit, Michigan, whose normal business is the manufacture and sale of automobiles and whose business at the time of the proceedings before the Board in this case was the manufacture of war materials. The petitioner has approximately 32,000 rank and file employees (R. III, 1815), who since 1937 have been represented by the United Automo-

*Emphasis supplied unless otherwise indicated.

bile Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the UAW-CIO (R. III, 1409-1420; R. I, 403).

The manufacturing operations of your petitioner are broken down into two main divisions which are in turn divided into approximately 20 small divisions, which in turn are subdivided into approximately 300 departments. Exhibits 22, 22A-22J, 23A-23J (R. II, 802-807; III, 1479-1498).

To directly supervise the manufacturing operations of the rank and file workers, petitioner employs approximately 125 general foremen, 643 foremen, 273 assistant foremen, and 65 special assignment men, who have the qualifications of foremen and who are used to replace and substitute for foremen and work on special assignments (R. II, 801; R. III, 1817). These supervisors will sometimes hereinafter be referred to as the foreman level of management. The petitioner almost invariably selects its assistant foremen from among the rank and file employees; its foremen from the ranks of assistant foremen, and its general foremen from the ranks of foremen (R. II, 812, 813).

The foreman level of management is in turn supervised by the higher levels of management, consisting of the president, two vice-presidents, seven superintendents and managers of plants, sixteen managers of divisions, thirty-two assistant managers of divisions and twenty superintendents of divisions, Exhibits 22, 22A-22J, 23A-23I (R. II, 802-807; III, 1479-1498).

The Circuit Court of Appeals in the majority opinion (R. III 2097) found that the foremen of the petitioner have the following duties, responsibilities and privileges:

"* * * All classes of foremen have certain privileges not enjoyed by the rank and file worker. Their salaries are substantially larger than the wages received by the production force. General foremen, with overtime pay, receive approximately $500 a month; foremen approximately $450 with overtime; assistant foremen approximately $410 with overtime. The special assignment men are paid about the same as general foremen or foremen. These supervisory employees are paid for justifiable absences. They are given a more general vacation with pay than other workers, and receive separation pay when they leave the company. They are paid for holidays, and permitted to report half an hour late for work without being deducted in pay.

"The foremen are the front line of management. At Packard the general foreman is in charge of one or more departments, sometimes as high as four departments. In some departments there are no foremen, only assistant foremen, and in such cases the duties of the assistant foremen correspond to those of the foremen. When a general foreman has charge of several departments, he sometimes has an assistant foreman in charge of each department. In general, foreman and assistant foremen have charge of a division of the work of the entire department, or in certain instances they are the direct assistants under the general foreman in connection with the work of the whole department. The special assignment men are trouble shooters who move from division to division in the plant, but they have the qualifications of general foremen and foremen, and also their authority.

"At Packard each foreman is responsible for the quantity and quality of production of the work in the area under his supervision. He must check the hourly production report and maintain production in his department. He must see that any breakdown is remedied, and that repairs are made. He

> has to instruct the foremen or assistant foremen under him and see to it that they properly execute their duties. None of the men in the four classes involved here performs any manual work, each of them being principally responsible for the maintenance of quality and quantity of production in the area under his supervision. The general foreman makes recommendations to the superintendent as to the rates of pay, transfer, rehire, lay-off, discharge and discipline of the foremen. These recommendations are usually followed. The foremen and assistant foremen likewise make recommendations, which are usually followed, concerning the pay, discharge, demotion, discipline, etc., of the workers under them. All classes of foremen make suggestions for the improvement of production, and these suggestions are very largely adopted."

In addition, the foremen are in charge of the first steps of the grievance procedure provided for in the contract with the UAW-CIO, Exhibit 23, (R. I, 403; III, 1410); and most grievances are settled at this stage of the grievance procedure (R. I, 530, 616).

The Foreman's Association of America, an alleged unaffiliated labor organization, on January 15, 1943, instituted proceedings under the Act (R. I, 44; II, 1299), and the Board after a hearing held (one member dissenting) that all of the personnel in the foreman level of management of the petitioner at Detroit, Michigan, were "employees" within the meaning of the Act, constituted a unit appropriate for the purpose of collective bargaining under Section 9(b) of the Act, and directed that an election be held to determine whether the foremen comprising the unit wished to be represented by the Foreman's Association of America (R. III, 1795, 1820, 1821).

The election was held and 666 votes were cast in favor of the Foreman's Association, 435 votes against it, and

155 challenged votes which were not counted. The Board on April 18, 1945, certified the Foreman's Association as the exclusive bargaining representative of the Union (R. III, 1836-1837).

The petitioner refused to recognize the certification and the Board filed its complaint alleging that petitioner was guilty of unfair labor practices within the meaning of Section 8(1)(5) and Section 2 (6)(7) of the Act (R. III, 1782) and after hearing thereon entered an order directing the petitioner to cease and desist from continuing to refuse to collectively bargain with the Foreman's Association (R. I, 30).

Thereafter, the Board, pursuant to Section 10(e) of the Act filed a petition in this case for enforcement of its order (R. I, 1-4). Two opinions were handed down by the Circuit Court of Appeals on August 12, 1946 (R. III, 2096-2108). Two justices upheld the Board, and one justice held that the petition for enforcement should be dismissed. The Circuit Court of Appeals entered its final judgment enforcing the order of the Board on August 12, 1946 (R. III, 2095), and on September 30, 1945 (one justice dissenting) denied the petitioner's Petition for Rehearing (R. III, 2127).

JURISDICTIONAL STATEMENT

Section 10(e) of the Act provides that the decree of the Circuit Court of Appeals entered upon a petition for enforcement shall be final "except that the same shall be subject to review * * * by the Supreme Court of the United States and upon writ of certiorari or certification as provided in Section 239 and 240 of the Judicial Code, as amended (28 U. S. C., Sections 346 and 347)." Jurisdiction is invoked under the above provisions of the Act and under Section 240 of the Judicial Code.

QUESTIONS PRESENTED

The questions presented are as follows:

(1) Are the petitioner's general foremen, foremen, assistant foremen and special assignment men employees within the meaning of the National Labor Relations Act?

(2) If the petitioner's general foremen, foremen, assistant foremen and special assignment men are employees within the meaning of the Act, can they be properly included within a unit for the purpose of collective bargaining under the provisions of the Act?

(3) If the petitioner's general foremen, foremen, assistant foremen and special assignment men are employees within the meaning of the Act and may be included in an appropriate unit, do these four classes of foremen constitute an appropriate single bargaining unit for the purposes of collective bargaining or should they be divided into separate units?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The United States Circuit Court of Appeals for the Sixth Circuit "has decided an important question of federal law which has not been but should be settled by the Supreme Court" (Sup. Ct. Rule 38 (5)(d)).

This is the first case to be decided by a Circuit Court of Appeals on the question of whether or not supervisory personnel constitute an appropriate unit for collective bargaining under the Act.

The questions presented are important and should be reviewed by the Supreme Court because:

(1) The decision in this case will materially affect the mass production automobile industry in the United States and every other type of mass production industry which employs foremen as part of its managerial structure. This is admittedly a test case. The Board in the instant case, "in view of the importance of the question raised in this case" (R. III, 1792), ordered a public hearing in Washington on behalf of the petitioner, the union and numerous other employer and employee groups. Representatives of many of the largest industrial corporations appeared and opposed an interpretation of the Act which would place the foreman level of management within the provisions of the Act, and under union control and pressures, pointing out that the result would be loss of effective leadership in the foreman level of management and divided loyalty, which would require far-reaching reorganization of the managerial structure of industry, would increase cost of production of consumer goods, and be detrimental to the foremen, to industry, and to the country at large (R. II, 1263-1266, 1269, 1278-80, 1293).

(2) The determination of the issues in this case directly involve the personal and individual rights of a large group of supervisory employees. If these supervisory employees are regimented into a unit represented by a labor union which admittedly has the same purposes and objectives as the labor union which represents the rank and file workers who are supervised by the foremen (R. I, 384, 545), industry may be forced to reduce the status of responsibility of the foremen (R. II, 1264, 1050, 1053).

(3) The National Labor Relations Board since its decision in the instant case has decided a large number of cases involving the questions here presented, and many of these cases will reach a Circuit Court of Appeals. There are also pending before the Board many petitions on behalf of the Foreman's Association and other unions seeking to represent the foremen of industry. An ultimate guiding rule should be announced by the Supreme Court so that there may be uniformity of decision in connection with the questions involved and the court should settle the important federal question as to the applicability of the Act to the foreman level of management.

(4) The decision of the Board in the instant case was not unanimous, Member Reilly filing a dissenting opinion in which he stated: "In my opinion, the decision we are making today does irreparable damage to the delicate balance between the conflicting interests of management and the worker which the National Labor Relations Act

sought to bring about in American industry" (R. III, 1822). The decision of the Circuit Court of Appeals was not unanimous, Justice Simons dissenting and holding that under a proper interpretation of the Act the foreman level of management of the petitioner were not employees within the meaning of the Act.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket, "No. 10,157, National Labor Relations Board, Petitioner v. Packard Motor Company, Respondent," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the decree of said Circuit Court of Appeals be reversed by this Court, and such further relief be granted as to this Court may seem proper.

Respectfully submitted,

LOUIS F. DAHLING,
Attorney for Petitioner Packard Motor Car Company.

Dated: Detroit, Michigan,
October 26, 1946.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF COURT BELOW

The majority and dissenting opinions of the Circuit Court of Appeals for the Sixth District are printed in the record (R. III, 2096-2108). The dissenting opinion filed in connection with the denial of the Petition for Rehearing is printed in the record (R. III, 2127).

JURISDICTION

A final judgment was entered in this cause by the United States Circuit Court of Appeals for the Sixth Circuit on August 12, 1946 (R. III, 2095), and a Petition for Rehearing, filed on behalf of the pettiioner herein, was denied by the Court on September 30, 1946 (R. III, 2127).

The Circuit Court of Appeals has in this case decided an "important question of federal law which has not been, but should be, settled by this Court" (S. Ct. Rule 38 (5) (d)).

STATEMENT OF CASE

Reference is made to the Petition for Writ of Certiorari for a statement of the case and issues involved.

ASSIGNMENTS OF ERROR

The Circuit Court of Appeals erred in holding that the petitioner's general foremen, foremen, assistant foremen and special assignment men were (1) "employees" within the meaning of the National Labor Relations Act, (2) that the foremen of petitioner could be placed in an appropriate unit for collective bargaining purposes under the Act, and (3) that all ranks of foremen could under the Act, be placed in a single unit for that purpose.

ARGUMENT

POINT I

IMPORTANCE OF THE QUESTION OF FEDERAL LAW INVOLVED

1. Importance of question to industry, to the foreman, and to the country at large.

At a public hearing held at the direction of the Board in Washington on February 27, 1945, in connection with this case, representatives of the following corporations appeared: General Motors Corporation; Chrysler Corporation; The Murray Corporation; Nash-Kelvinator Corporation; Hudson Motor Car Company; Thompson Products, Inc.; Standard Steel Spring Company; Aeronautical Products; Continental Motors; Mack Manufacturing Company; U. S. Rubber Corporation; United States Industrial Chemicals, Inc.; Firestone Tire & Rubber Company, together with representatives of many other corporations (R. II, 1255-1286). These representatives of industry took the position that an interpretation of the Act which would require industry to collectively bargain with a union representing its foremen, and foremen thus by legal processes thrown into the union stream, would require a far-reaching reorganization of the managerial structure of industry. The foreman's managerial status would have to be reduced. This would increase costs and affect the cost of living. It would be bad for industry, bad for the foreman, and bad for the country.

2. Action of National War Labor Board indicates importance of question.

The importance of the question involved is further indicated by the fact that the National War Labor Relations Board on May 31, 1944, appointed a Special Panel consisting of Sumner H. Slichter, of Harvard University; William H. Spohn, attorney and labor arbitrator, of Madison, Wisconsin; and Dean Robert D. Calkins, of Columbia University, to hear certain dispute cases involving the Foreman's Association of America and thirteen large corporations (R. III, 1853). Hearings were held by the Panel intermittently in Detroit and elsewhere from June 14, 1944, to October 4, 1945, and the report of the Panel, consisting of 175 pages, appears in the record. Board's Exhibit 19 (R. III, 1852-2082, 1763).

3. The Board has reversed itself twice and its decisions have not been unanimous.

In June, 1942, in a two-to-one decision, the Board held in *Matter of Union Collieries Co.*, 41 N. L. R. B., 961, that a unit consisting of some supervisory employees was an appropriate unit for the purpose of collective bargaining. On May 10, 1943, the Board in *Matter of Maryland Drydock Company*, 49 N. L. R. B., 733, one member dissenting, reversed its decision in the *Collieries* case and held a unit of supervisors was not an appropriate unit under the Act, and followed this ruling in *Matter of Boeing Aircraft Co.*, 51 N. L. R. B., 67; *Matter of Murray Corporation*, 51 N. L. R. B., 94; and *Matter of General Motors Corporation*, 51 N. L. R. B., 457. In the present case, the Board, one member dissenting, reversed the *Drydock* case and the cases in which it had affirmed its holding in that case. The uncertainty of the Board as to a proper solution of the question involved indicates the necessity of a review by the Supreme Court.

4. The Board recognizes the importance of the question.

The Board itself appreciates the importance of the problems involved. On February 28, 1946, Chairman Herzog, of the Board, appeared before the Subcommittee of the Committee on Education and Labor of the United States Senate (79th Cong. 2nd Session) on the Case Bill, H. R. 4908, which amended the Labor Relations Act by excluding supervisors. He told the Committee (page 333 of the Report): "The Packard case, which found the Foreman's Association of America bargained for the Packard foremen, is now on its way through the courts, which will tell us during 1946 whether we were right or wrong in construing the statute as we did * * *. No one could be more aware of the difficult problems which were presented by this issue than are the three members of the Board." It should also be noted that Chairman Herzog in his concurring opinion in the Packard case (R. I, 32) stated that "The issues in this case cannot be analyzed in terms of black and white; they present a study in grey," and that "two reversals in as many years (once in Maryland Drydock case and once in Packard case) are enough" (R. I, 37).

5. The importance of the question is indicated by the action of Congress subsequent to the adoption of the Act.

Following the decision of the Board in the *Collieries* case *(supra)* holding the supervisors could be placed within an appropriate unit, H. R. 2239, excluding supervisors from the Act, was introduced in Congress. Extended hearings were held before the Military Affairs Committee of the House and just as these hearings were concluded, and on May 10, 1943, the Board decided the *Maryland Drydock* case *(supra)* reversing the *Collieries* case. No further action was taken on the bill.

Following the decision of the Board in the present case, the Case Bill, H. R. 4908, was introduced in Congress. This bill expressly amended the National Labor Relations Act by excluding supervisors. Senator Ellander stated that the purpose of the amendment was to clarify the position of the supervisory employee by explicitly setting forth the intent of Congress to exclude persons having *bona fide* supervisory authority from the provisions of the Act (92 Cong. Rec. 5508). The Case Bill was passed by the Senate (92 Cong. Rec. 5847) and thereafter was adopted by the House (92 Cong. Rec. 6036-6057). The Act was subsequently vetoed by the President and returned to the House, and that body again voted in favor of the Act, failing to override the President's veto by a margin of only five votes (92 Con. Rec. 6798, 6801).

6. Cases now pending involving the questions herein presented indicate the desirability of a final ruling by the Supreme Court.

Industry generally is contesting the right of the rank and file unions and so-called independent unions, such as the Foreman's Association, to collectively bargain for the foreman. In the year 1946, the Board among many others decided the following cases involving the same questions here presented: *Jones & Laughlin Steel Corp.*, 66 N. L. R. B., No. 51; *L. A. Young Spring & Wire Corp.*, 65 N. L. R. B., No. 59; *B. F. Goodrich Co.*, 65 N. L. R. B., No. 58; *Midland Steel Products Co.*, 65 N. L. R. B., No. 177; *Kelsey-Hayes Wheel Co.*, 66 N. L. R. B., No. 76; *Baldwin Locomotive Works*, 67 N. L. R. B., No. 168; *Hudson Motor Car Company*, 67 N. L. R. B., No. 52; *Chrysler Motor Car Company*, 69 N. L. R. B. No. 182. Many, if not all, of these cases will reach a Circuit Court of Appeals. A guiding rule should be established by the Supreme Court to avoid confusion and possible conflict of decisions in the Circuit Courts of Appeal.

POINT II

THE GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN, AND SPECIAL ASSIGNMENT MEN (HEREIN SOMETIMES COLLECTIVELY CALLED "FOREMEN") ARE NOT EMPLOYEES WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT

1. The words of the Act are clear and its provisions do not include foremen.

The Act was adopted by Congress in the hope that it could eliminate obstructions to the free flow of commerce caused by strikes and industrial unrest by requiring employers to collectively bargain with employees.

Congress defined an employer as including "*any person acting in the interest of any employer directly or indirectly* * * *." The Act provides that an "'employee' shall include any employee," except certain classes of no importance here.

Collective bargaining does not end with the execution of a labor contract between the employer and the labor union. Collective bargaining continues on a day-to-day basis. The terms and conditions of the labor contract must be interpreted, applied and enforced in connection with situations and grievances which arise from day to day.

The petitioner's contract with the UAW-CIO, the union of the rank and file workers (R. III, 1409-1420) covers rates of pay, transfers, lay offs, rehiring, demotions, discharges, and discipline of the rank and file.

The foremen of the petitioner, as found by the Circuit Court of Appeals, are the "front line of management", (R. III, 2097). They are the first step in the grievance procedure under the UAW-CIO contract (R. III, 1409-1420), and must represent management in solving the grievances

arising out of the application of the provisions of the contract. *They act directly in the interest of the petitioner in carrying out the very purpose of the Act, namely, collective bargaining.*

The Board and the courts have consistently held that foremen act directly in the interest of their employer. They have repeatedly and invariably held that the actions, statements and conduct of the foremen in labor matters are imputed to the employer and make the employer liable under an unfair labor charge under the Act and that the liability of the employer is in no way affected by the fact that the employer did not authorize such action, statements or conduct. *Matter of Tenn Copper Co.*, 9 N. L. R. B. 117; *Matter of Emsco Derrick & Equipment Co.*, 11 N. L. R. B. 79, 87; *Matter of American Steel Scraper Co.*, 29 N. L. R. B. 939, 942; *H. J. Heintz Co. v. N. L. R. B.*, 311 U. S. 514; *International Association of Merchants v. N. L. R. B.*, 311 U. S. 72; *N. L. R. B. v. Marquette Metal Products Co.*, 152 Fed. (2d) 964; *N. L. R. B. v. Link Belt Co.*, 311 U. S. 584, 598.

As stated by Judge Simons in his dissenting opinion in this case (R. 111, 2107):

> "Foremen are employers not only by reason of their duties and responsibilities, but by the inescapable implication of Sec. 152 (2) which classifies as an employer one who is 'acting in the interest of an employer, directly or indirectly.' Sec. 152(3) refers to but does not define 'employee.' The two sections must be read *in pari materia*, and so considered the breadth of the one necessarily limits the ambit of the other."

2. The purposes of the Act clearly indicate that Congress did not intend that foremen should be considered employees.

Congress plainly stated in Section 1 of the Act that the purpose of Congress was to eliminate "strikes and other forms of industrial strife and unrest" that burdened and obstructed commerce. There have not been in the past, and were not at the time the Act was being considered by Congress, any strikes of foremen or management personnel. Congress could only have had in mind the rank and file strikes in the automobile, steel, coal, etc., industries. See Bulletin No. 651, dated August, 1936, issued by the United States Department of Labor, Bureau of Labor Statistics, dealing with strikes in the United States for the years 1880 to 1936. As a matter of fact, it was *seven years* after the Board was organized before it was called upon to decide whether foremen constituted an appropriate unit. See opinion of Board in *Matter of Maryland Drydock (supra)*.

It is clear, therefore, that Congress did not have foremen in mind and did not intend that the Act should cover supervision or any other level of management.

3. The legislative history of the Act clearly indicates that Congress did not intend that foremen should be considered "employees."

Congressional debates (Cong. Rec. Vol. 9, No. 101, Page 7847) in connection with the Act disclosed that Congress was considering means "designed to protect the *laborer*," and Senator Wagner referred to "the making of collective agreements between employers and *workers* without exercising any compulsion upon either side * * *" (p. 7854), and spoke of "An upright, impartial and peaceful forum to industry and *labor* to benefit *employers, workers*, and the

country at large" (p. 7855). Senator Tydings speaks of "workingmen" (p. 7954), and Senator Borah speaks of "a very large body of 'workingmen'" (p. 7955).

See also Hearings before the Committee on Education and Labor, United States Senate, 74th Congress, 1st Session, on S 1958 (1935) U. S. Gov't Printing Office. Senator Wagner's discussion of the Wagner Act, 79th Congressional Record No. 101, p. 7846 *et seq.*, May 15, 1935; Senator Wagner, 79th Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980, May 6, 1935; Senator Norris, Vol. 79 Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980.

It is clear, therefore, that Congress had in mind the protection of "labor" and "workingman" and not the protection of highly paid supervisory employees.

4. Related legislation supports the position of petitioner that Congress did not intend that foremen should be considered as "employees."

Subsection (6) of Section 1101 of the Social Security Act (42 U. S. C. A. 1301) provides: "The term 'employee' includes an officer of a corporation." The Court in the case of *Deecy Products Co. v. Welch*, 124 F. (2d) 592, stated that this definition had been used *so that it would be clear that the Act covers superior employees as well as inferior employees.*

The Merchant Marine Act of 1936 (46 U. S. C. A., Section 1251), passed the year following the adoption of the National Labor Relations Act, provides in Section 1253 (c) that the term "employee" means "any person who performs any work, as an employee or subordinate official * * *." Attention is directed to the fact that the Merchant Marine Act expressly provides (Section 1252) that the provisions of the Act shall not in any manner be construed to

limit, affect of repeal the provisions of the National Labor Relations Act, but shall be construed to supplement the latter.

In these statutes dealing with social problems, Congress specifically enlarged the definition of the word "employee." It is only reasonable to assume that if Congress had intended to include foremen or any other level of management within the meaning of the word "employee" in the National Labor Relations Act, it would have evidenced that intent as it did in the Merchant Marine Act, and the Social Security Act.

POINT III

THE FOREMEN OF THE PETITIONER CANNOT PROPERLY BE INCLUDED IN ANY UNIT AND CERTAINLY NOT IN A SINGLE UNIT FOR THE PURPOSE OF COLLECTIVE BARGAINING

Section 9(b) of the Act reads as follows:

> "(b) The Board shall decide in each case whether in order to insure the employees the full benefit of their right of self-organization and to collective bargaining, *and otherwise to effectuate the policies of this* Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

Because of the status and the duties and responsibilities of the foremen and for the reasons heretofore set forth even if foremen are held to be employees within the meaning of the Act the Board abused its discretion in holding that they constitute an appropriate unit under the Act.

The foremen are admittedly the "front line of management." They are the agents and representatives of management. The decision in this case will throw the foremen

in the union stream with the very men they supervise and subject them to union pressure and union principals. Management will never know whether the decision of a foreman was dictated by union leanings or pressure or in the interest of management. The Circuit Court of Appeals failed to apply the universal rule of law that an agent will not be allowed to enter into relationships which may conflict with the interests of his principal (*U. S. v. Carter*, 217 U. S. 286; *Michoud v. Girod*, 45 U. S. 503) and by its judgment placed the agents of the petitioner in a position where they will be dominated, pressured and controlled by the union that represents them.

Furthermore, even if foremen could be placed in an appropriate unit, it would be inappropriate to have a single unit consisting of several ranks of supervision where each rank exercised authority over the rank below it. *Matter of Murray Corporation of America*, 47 N. L. R. B. 1003; *Matter of Boeing Aircraft Co.*, 45 N. L. R. B. 630. The Board reversed itself on this matter in the present case. The same Circuit Court of Appeals which decided the instant case held in *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718, that it was improper for the National Labor Relations Board to certify a rank and file union as the collective bargaining agent of the plant protection men of the steel company. The Court said:

> "When these particular unions were selected as bargaining agents for the plant protection employees, these employees might in an effort to discharge their duty to their employer find themselves in conflict with other members of the union over the enforcement of some rule or regulation they were hired to enforce * * * We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

The Court in the instant case also cited with approval the findings of the National War Labor Board that it would not be appropriate for supervisors "who are responsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling grievances of rank and file workers, and who generally represent higher management in dealing with the rank and file workers, to be subject to discipline by the men whom they supervise."

Nevertheless, the Circuit Court of Appeals in the instant case placed 125 general foremen in the same unit with the 643 foremen and 273 assistant foremen who are supervised by them, thus subjecting the general foreman to discipline by the very men they supervise.

CONCLUSION

It is respectfully submitted that the importance of the questions involved to the economy of the country, to the foremen, and to industry are such as to require a full and complete hearing by this Court, and a reversal of the judgment of Circuit Court of Appeals.

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